

August 19, 2005

Western Washington Municipal SW Comment  
Bill Moore  
WA Department of Ecology  
Water Quality Program  
PO Box 47600  
Olympia, WA 98504-7600

Subj.: Preliminary Draft NPDES Phase II Stormwater Permit

Dear Bill:

Thank you for the opportunity to comment on the preliminary draft NPDES phase II stormwater permit. The City of Everett appreciates the opportunity to comment on the permit in advance of the formal public review later this year.

Detailed comments on the draft permit are attached to this letter. However, the City of Everett has three general comments relating to monitoring, the pre-development forested condition requirement and unfunded mandates which are discussed below.

The monitoring requirement in S6 is a major concern to the City of Everett and many other phase II jurisdictions. These concerns were presented in a July 19, 2005 letter (copy enclosed) from the Association of Washington Cities (AWC) to Jay Manning, Dept. of Ecology Director, and discussed at our August 18, 2005 meeting with Jay Manning. Rather than reiterating these concerns in this letter, I would just like to reinforce that the City of Everett shares the concerns expressed in the AWC letter to Jay Manning and supports the alternative monitoring condition provided at the conclusion of the August 18, 2005 meeting (copy enclosed).

Concerns regarding the pre-development forested condition requirement were also presented in the AWC letter to Jay Manning and discussed at our August 18, 2005 meeting. Again, I would like to simply state that the City of Everett agrees with the concerns expressed in the AWC letter to Jay Manning and that we will work with other phase II permittees to provide the legal analysis Jay Manning suggested at our August 18, 2005 meeting.

Unfunded mandates was listed as a concern in the AWC letter, but not discussed. Therefore, I am taking this opportunity to express the City of Everett's concerns about unfunded mandates.

There are many requirements in the permit that go beyond the EPA's phase II requirements in the 12/8/99 Federal Register. The additional requirements include the monitoring requirement in S6 and the pre-development forested condition requirement. The attached detailed comments point out several other requirements that go beyond EPA's phase II requirements in the 12/8/99 Federal Register.

Ecology apparently intends to include requirement in the phase II permit that go beyond the minimum measures in the 12/8/99 Federal Register despite the fact that EPA "strongly recommends that until the evaluation in section 122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s, without the agreement of the operator of the affected small MS4...". Ecology should seek a legal opinion from the Attorney General's Office regarding whether these additional requirements are a violation of the state law prohibiting unfunded mandates.

Again, thank you for the opportunity to comment on the preliminary draft NPDES phase II stormwater permit. If you have questions regarding the City of Everett's comments, please contact me at (425) 257-8855 or [dmathias@ci.everett.wa.us](mailto:dmathias@ci.everett.wa.us).

Sincerely,

Dan Mathias, PE  
Utilities Engineer